IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22669 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HASMUKH @ BATALO CHANDUBHAI PATEL - Petitioner(s)
Versus
POLICE COMMISSIONER VADODARA & 2 - Respondent(s)

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Appearance :
MR HARSHAD K PATEL for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MR ND GOHIL AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 13/06/2006

ORAL JUDGMENT

1. By filing this petition, the petitioner, who is detained under the provisions of Prevention of Anti Social Activities Act (“PASA” for short), has challenged his detention order dated 7-11-2005, by which he is detained as a “bootlegger”

under Section 3 (1) read with Section 2 (b) of PASA. Along with the order of detention, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference of two criminal cases filed against him under the provisions of the Prohibition Act.

2. The detaining authority after arriving at a subjective satisfaction has passed the aforesaid order of detention against the petitioner. According to the detaining authority, the petitioner has violated the law and order and public order. It is also stated in the detention order that the activities of the petitioner are prejudicial to the public health.

3. Mr. Harshad Patel, learned advocate for the petitioner has vehemently submitted that it cannot be said that the detenu is a bootlegger, simply because some criminal cases are registered against him under the Bombay Prohibition Act.It is further submitted that at the most the petitioner can be said to have violated the law and order, but it cannot be that the petitioner has violated public order or that his activities are prejudicial to public health when there is no credible material to come to the conclusion that the activities of the petitioner is prejudicial to public health. He further submitted that it cannot be said that consumption of country liquor affects the public health unless there is some material on record in this behalf. It is submitted by him that the authority has not applied its mind properly and came to the conclusion that the

activities of the petitioner are prejudicial to public health, even when there is no material on record in this behalf. In order to substantiate his say, Mr. Patel has relied upon the decision of the Supreme Court in **District Collector, Ananthpur and another vs. V. Laxmanna** reported in **2005 AIR SCW 1822**. In the aforesaid case, the Supreme Court has observed as under in paragraph 7 :

> "7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation."

4. It is required to be noted that in the detention

order it is not mentioned as to how the activity of the petitioner is prejudicial to public health and it can safely be said that the petitioner may be guilty of violating law of the land but by selling country liquor or by possessing the same, it cannot be said that it is prejudicial to public health.

5. Considering the aforesaid aspect of the matter and considering the fact that there is nothing to show that the activities of the petitioner are prejudicial to public health, at the most it can be said that the petitioner is guilty of violating law and order but it cannot be said that the petitioner has disturbed the public order and that the activities of the petitioner are prejudicial to public health, therefore, the impugned order of detention is required to be quashed and set aside.

6. In view of what is stated hereinabove, the petition is allowed. The order of detention passed against the petitioner dated 7-11-2005 is quashed and set aside. The detenu Hasmukh @ Batalo Chandubhai Patel is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

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